S.B.Civil Second Appeal No. 428/2005
Kheem Chand
Vs.
All Musalman Samaj Beda through representatives

DATE OF ORDER : - 2.3.2006

HON'BLE MR. PRAKASH TATIA,J.

Mr. B.K. Vyas, for the appellant.
Mr.Pradeep Shah, for the respondent - Caveator.

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Heard learned counsel for the parties.

Learned counsel for the appellant submits that the two courts below committed error of law in drawing inference and recorded the finding that there exists relationship of landlord and tenant between the plaintiff and defendant. According to the learned counsel for the appellant, the suit property was purchased by the defendant from Rahim Khan for which an agreement to sale was executed on 14.3.1979. The sale price was fixed Rs.30,000/- and defendant paid Rs.500/- to Rahim Khan, therefore, the appellant is living in the suit premises in his own right. So far as the rent deed produced by the plaintiff is concerned, admittedly, the property was not let-out on the said date given in the rent deed. It is also submitted that in view of vacillating stand of plaintiff about the letting-out of the property, it is clear that false case of tenancy has been concocted. It is also submitted that plaintiff came with specific plea that the suit property was given by will

to them but the said will was not produced in the Court. It is also submitted that for recovery of possession of wakf property from the tenant, the property the Wakf Board was necessary party.

Learned counsel for the respondent-plaintiff submits that the plaintiff proved the rent deed and that finding of fact has been recorded by the two courts below concurrently in favour of the plaintiff, therefore, merely on this basis of this fact, the plaintiff is entitled to recover the possession of the property from the defendant - tenant. As in view of the above, tenant cannot dispute the title of the plaintiff. It is also submitted that the title of the suit property was not relevant and could not have been examined in proceedings initiated for eviction of the tenant under the provisions of Rent Act and the plaintiff may not have been allowed to prove his title to the property by the Court.

It is also submitted that after the decree, the decree has been executed and possession has been taken over by the plaintiff.

I considered the submissions of the learned counsel for the parties and perused the facts of the case. The facts which are relevant for the purpose of deciding this appeal are that the plaintiff has produced the rent deed singed by the defendant and proved it by evidence. Some contradiction about the date of letting-out was considered by the two courts below and thereafter, courts held that by virtue of that rent deed, defendant admitted himself to be tenant of the plaintiff. Apart

from it the defence of the defendant was also fully considered which reveals that according the defendant sale agreement was executed on 14.3.1979. The sale consideration was Rs.30,000/- and he paid only Rs.500/-. The alleged seller died within 23 days from the date of alleged agreement. The finding of the two courts below are based on appreciation of evidence and not vitiated because of any lawful reason. I do not find that any substantial question of law is involved in this appeal.

Hence, the appeal of the appellant is dismissed.

(Prakash Tatia), J.

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